

CITY OF LINCOLN

LEASE AGREEMENT

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THIS LEASE AGREEMENT ("Lease") is made and entered into as of the ____ day of _____, 2010, by and between Lynette McGill, (Owner) and The City of Lincoln ("City").

AGREEMENTS

1. PREMISES

Owner leases to City, and City leases from Owner, property owned by Owner located on the real property legally described on Exhibit A ("Property"), for City's exclusive use to construct, maintain and operate City's Communications Facility (the "Site"). The Site is aerially depicted and shown on Exhibit B. Owner also grants to City the Access and Utility Licenses described in Section 5 of this Lease. The Tower space, the Site the Access License and the Utility License are referred to collectively in this Lease as the "Premises."

2. USE

The Premises will be used as a Communication Facility for the purpose of installing, constructing, maintaining, repairing, operating, altering, inspecting, expanding, adding to and removing City's communications equipment, including, but not limited to, the following equipment:

- a. Any and all towers, antennas, dishes and/or grids, with any associated lighting, as City may deem appropriate or as may be required by state or federal authorities.
- b. Transmission lines and mounting and grounding hardware.
- c. A concrete pad and communications compound containing, without limitation, telecommunications equipment consisting of base station cabinets, wireless communication equipment, switches, power supplies, lighting, batteries, and accessories.
- d. An emergency generator (or other back up power source) to be located, at City's option, within the communications compound, adjacent to the communications compound or within a separate area adjacent to the communications compound. The propane fuel tank for the generator may be located either inside or outside the communications compound, in accordance with applicable building codes.

City will provide a copy of its building plans and specifications to Owner prior to construction. Thereafter, Owner shall have thirty (30) days to provide comments on such plans and specifications. The plans and specifications shall be incorporated herein as Exhibit C.

As soon as reasonable possible after the end of the Owner's comment period, City shall construct and install, at City's cost, the Communications Facility at the location depicted on

Exhibit B, in accordance with the approved plans and specifications, Exhibit C. The Communications Facility may be installed by City or by any of City's agents or contractors. City may run transmission lines between City's equipment and City's antennas, dishes and grids.

City may make alterations to the Communications Facility from time to time as City determines to be necessary or desirable; provided that City's substitution of equipment with equipment of substantially the same size and weight does not interfere with Owner's other uses of the property.

Any damage to or within the Property caused by the erection; operation and maintenance of the Tower improvements shall be at City's sole expense. City will perform all work on the Property in a good and workmanlike manner, and in accordance with all applicable governmental laws, ordinances, regulations and codes. City shall obtain all permits necessary for such construction. All contractors shall carry statutory worker's compensation insurance and liability insurance coverage's as are customarily maintained by reputable general contractors in the geographic area of the Site.

3. TERM

The primary term ("Primary Term") of this Lease will be for twenty-five (25) years, and will commence upon the execution of this Lease Agreement. After commencement the Primary Term, the City may elect to continue leasing the premises for an additional 25 year period under the same terms and conditions, unless sooner terminated as provided herein.

4. RENT

City agrees to pay Owner an annual lease amount of one thousand two hundred dollars (\$1200), payable in advance of each year of tenancy. Rent will be paid to Owner at its address designated in Section 9. The lease amount shall automatically increase (10%) ten percent every five years on the anniversary date of the execution of this agreement.

5. ACCESS AND UTILITIES

Owner grants to City, for use by City, its employees, agents, contractors and by utility companies, a non-revocable license during the Primary and any exercised Renewal Term, over the Property on a twenty-four (24) hour daily basis, for (i) ingress and egress to and from the Premises and the Communications Facility (the "Access License"), and (ii) the installation, operation and maintenance of necessary utilities for the Premises and the Communications Facility (the "Utility License"). If reasonable in City's opinion, such Access License and Utility License will be over and lie within existing roads, parking lots and/or roads hereafter established by City. The Owner and City shall, within 60 days of the execution of this agreement, determine the area or areas to be used as the Access and Utilities license areas. City may improve the Access License by grading, graveling and/or paving. The Access License, to the extent further identified, is more particularly described on Exhibit D, and the Utility License, to the extent further identified and not lying within the Access License, is more particularly described on Exhibit E. City will notify Owner of any change in the particular location of any Access License or Utility License, if such differs from the descriptions on Exhibits C and D hereto.

6. UTILITIES

City will be solely responsible for and promptly pay all charges for electricity or any other utility used or consumed by City on the Premises. City will have a meter installed at the Premises for City's utility use, and the cost of such meter and of installation, maintenance, and repair thereof will be paid for by City. City may install or improve existing utilities servicing the Communications Facility and may install an electrical grounding system or improve any existing electrical grounding system to provide the greatest possible protection from lightning damage to the Communications Facility. Owner will cooperate with City in City's efforts to obtain utilities from any location provided by Owner or the providing utility, including signing any instrument reasonably required by the utility company.

7. MAINTENANCE

City will maintain the Tower in a proper operating and safe condition. All costs associated with the maintenance and repair of the Tower, including painting, will be paid by City.

8. NOTICE

All notices or demands are deemed to have been given or made when delivered in person or mailed by certified, registered, or express mail, return receipt requested, postage prepaid, United States mail, and addressed to the applicable party as follows:

Owner:

Lynnette McGill
16400 Branched Oak Road
Waverly, NE 68462

City:

Sgt. Todd Beam or his assignee
Lincoln Police Department
575 S. 10th
Lincoln, NE 68508

with a copy to:

City Law Department
555 S. 10th
Lincoln, NE 68508

A party may change its address to which any notice or demand may be given by written notice thereof to the other party.

9. LIABILITY AND INDEMNITY

City agrees to indemnify and save the Owner harmless from all claims (including costs and expenses of defending against such claims) arising from any breach of this Lease by City, or any negligent act, negligent omission or intentional tort of City or City's agents, employees, contractors, invitees or licensees occurring during the term of this Lease in or about the Premises. The provisions of this Section 9 will survive the termination of this Lease.

10. TERMINATION

In addition to the termination provision contained in Section 11 of this Lease, City has the right to terminate this Lease at any time upon any of the following events:

- a. Upon providing Owner thirty (30) days prior written notice for a governmental decision to discontinue funding the Lease; or
- b. Upon thirty (30) days written notice, if the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of the Communications Facility cannot be obtained, or is cancelled, expires, is revoked, withdrawn or terminated, or if City determines the cost of obtaining such approval or renewal is prohibitive; or
- c. Upon thirty (30) days written notice, if City determines that the Premises are not appropriate for locating or operating the Communications Facility for technological reasons, including, but not limited to, signal interference.

Upon termination neither party will owe any further obligations under this Lease except for the indemnities and hold harmless provisions in this Lease, the provisions of Section 20 of this Lease, the prompt reimbursement of pro-rata prepaid rent, and City's responsibility to remove all of the Communications Facility from the Premises and restoring the Premises to its condition as of the commencement date of this Lease, as near as practicable (save and except utilities and fences installed, access areas improved, removal of vegetation for construction purposes, concrete pads and guy anchors installed, items constructed or changed by any person(s) or entity(ies) other than City, normal wear and tear, and acts beyond City's control). At the Owner's election, the concrete pads will be removed to a depth of not more than one foot.

11. DEFAULT

If City fails to comply with any material provision of this Lease and such failure is not cured within thirty (30) days after receipt of written notice thereof from Owner, Owner may, at its option, terminate this Lease without affecting its right to sue for all past due rentals and any other damages to which Owner may be entitled. If any such default cannot reasonably be cured within thirty (30) days, City will not be deemed to be in default under this Lease if City commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion. If Owner is entitled to collect or otherwise remedy said damages, and if Owner seeks enforcement of its rights through an attorney or other legal procedures, Owner is entitled to collect, in addition to any other amounts owed, its reasonable costs and attorneys' fees thereby incurred.

If Owner fails to comply with any material provision of this Lease, and such failure is not cured within thirty (30) days after receipt of written notice thereof from City, City may, at its option, cure the failure at Owner's expense (which expense may, at City's option, be deducted from rent) or terminate this Lease without affecting its right to demand, sue for, and collect all of its damages arising out of Owner's failure to comply (including consequential damages). If any such default cannot reasonably be cured within thirty (30) days, Owner will not be deemed to be in default under this Lease if Owner commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion. If City is entitled to collect or otherwise remedy said damages, and if City seeks enforcement of its rights through an attorney or other legal procedures, City is entitled to collect, in addition to any other amounts owed, its reasonable costs and attorneys' fees thereby incurred.

The rights and remedies stated in this Lease are not exclusive and the parties, in the event of a breach of this Lease or a dispute, are entitled to pursue any of the remedies provided in this Lease, by law, or by equity.

No course of dealing between the parties or any delay on the part of a party to exercise any right it may have under this Lease will operate as a waiver of any of the rights provided hereunder or by law or equity, nor will any waiver of any prior default operate as the waiver of any subsequent default, and no express waiver will affect any term or condition other than the one specified in such waiver and the express waiver will apply only for the time and manner specifically stated.

12. TAXES

Unless separately billed to City by a taxing authority, City will pay annually to Owner an amount equal to any real estate taxes attributable to any improvement to the Premises made by City. City will pay to Owner City's share of any such tax within sixty (60) days of receipt of sufficient documentation indicating calculation of City's share and payment of the real estate taxes by Owner.

13. FIXTURES

Owner covenants and agrees that no part of the improvements installed, constructed, erected or placed by City on the Premises or other real property owned by Owner will be or become, or be considered as being, affixed to or a part of Owner's real property; and any and all provisions and principles of law to the contrary notwithstanding, it is the specific intention of Owner to covenant and agree hereby that all personal property and improvements of every kind and nature installed, constructed, erected, or placed by City on the Premises, or other real property owned or leased by Owner, will be and remain the property of City despite any default or termination of this Lease and may be removed by City any time in City's discretion provided that City at its expense restores the Premises pursuant to Section 10.

14. ASSIGNMENT AND SUBLETTING BY CITY

City shall continue to be jointly and severally liable with any such assignee(s) for the performance of all terms and conditions of this Lease. However, the Owner may, but shall not be required to, fully release City from all requirements and responsibilities of this Lease upon the

Owner's approval of an assignee(s) once the Owner has evaluated sufficient written documentation from City and the assignee(s) regarding the assignee(s) ability to fully perform all of City's responsibilities and obligations under this Lease. Owner shall not charge City or any assignee(s) any additional fee or require any additional compensation in connection with an assignment under this section.

15. PERMITS

Owner acknowledges that City will be contacting the appropriate local governmental agencies for the purposes of obtaining all building permits and approvals, zoning changes and/or approvals, variances, use permits, and other governmental permits and approvals (collectively, "Permits") necessary for the installation, construction, operation and maintenance of the Communications Facility. Owner agrees to fully cooperate with City in obtaining the Permits and, without limiting the generality of the foregoing, to execute any applications, maps, certificates or other documents that may be required in connection with the Permits.

16. INSURANCE

The City of Lincoln, a political subdivision in the State of Nebraska, is self insured for general liability and worker's compensation. The City shall maintain specific funds as self insurance reserves to pay all its legal liabilities. The City has the general power to sue and be sued under City Charter and state law. The City is legally authorized to pay lawful judgments and settlements. The City also has the legal authority to levy taxes in amounts sufficient to pay its legal liabilities.

17. ENVIRONMENTAL MATTERS

Owner warrants and represents that to its knowledge the Property and any existing improvements on the Property are free of Hazardous Substances (as defined below). Owner will indemnify, protect, defend, and hold harmless City from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, attorneys' fees, sustained or incurred by City pursuant to any federal, Owner or local laws, implementing regulations, common law or otherwise, dealing with matters relating to the environment, hazardous substances, toxic substances and/or contamination of any type whatsoever (collectively, "Hazardous Substances") in, upon or beneath the Property, and the other improvements on the Property (excluding the Communications Facility), provided this indemnification shall not apply with respect to any Hazardous Substances released by City.

City will indemnify, protect, defend and hold harmless Owner from and against all ~~claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, attorneys' fees, sustained or incurred by Owner pursuant to any federal, Owner or local laws, implementing regulations, common law or otherwise dealing with matters relating to Hazardous Substances released by City in, upon or beneath the Property,~~ the Communication Facility, and the improvements on the Property.

18. FENCES

During the Primary Term, City may, if it has constructed an enclosure to house a portion of the Communications Facility, fence in that portion of the Premises as City determines is reasonable for the proper and efficient operation and protection of the Communications Facility contained in the enclosure.

19. TITLE

Owner represents and warrants to City that Owner has good and marketable title to the Premises, Access License and Utility License, free and clear of all liens, encumbrances and exceptions, except those described in Exhibit F attached hereto, of duration and quality equal to that conveyed to City by this Lease. Owner shall warrant and defend the same to City against the claims and demands of all persons and entities.

20. QUIET ENJOYMENT

Owner covenants that City, upon paying the rent and observing the other covenants and conditions herein upon its part to be observed, will peaceably and quietly hold and enjoy the right to use the Premises, Access License and Utility License on the terms and conditions and for the purposes stated herein during the term of this Lease, as it may be extended, without hindrance, ejection or molestation by Owner or any person(s) or entity(ies) claiming under the Owner.

21. CONTINGENCIES

Notwithstanding anything contained herein to the contrary, and in addition to and not in limitation of City's other rights hereunder, it is expressly agreed that City's obligations under this Lease are conditioned upon City's satisfaction, in its sole and absolute discretion, with the feasibility of engineering, installing, constructing and operating the Communication's Facility; City's receipt of all necessary or appropriate building and construction permits and all licenses, permits, approvals and consents from all applicable governmental authorities necessary or appropriate for City to use and operate the Communication's Facility on the Premises.

City is hereby given as the right to survey, soil test, radio coverage test, and to conduct any other investigations needed to determine if the surface and location of the Premises are suitable for City's use intended by this Lease.

22. INTERFERENCE

Owner will not permit or suffer the installation and existence of any other improvement (including, without limitation, transmission or reception devices) upon the Tower or any other portion of the Owner's property by a third-party if such improvement interferes with transmission or reception by City's Communications Facility in any manner whatsoever.

City shall at all times be responsible for the proper operation of Communications Facility and shall make certain that the same complies with all pertinent laws, rules and regulations of any applicable governmental authority. In the event that City's equipment causes interference

with any of Owner's communication equipment that is in existence prior to the Communications Facility becoming operational, City, upon notice received of the interference, shall take all steps necessary to correct and eliminate the interference as soon as possible and shall take all necessary precautions and corrective action needed to prevent the reoccurrence of the interference. If City is unable to cure such interference within thirty (30) days of Owner's demand, Owner may terminate this lease without penalty.

Notwithstanding the foregoing, the parties intend to be bound to the principle that the communications provider who is first in time shall be protected from interference by subsequent providers. Owner will not use its property in any manner which will limit, impair or restrict the use or operations of the Communications Facility or allow any use which could cause any destructive or conflicting interference with the Communications Facility. If any harmful interference shall result from the operation of any such use to the Communications Facility, then Owner shall immediately cause such operations to cease until such interference is eliminated. If Owner is unable to cure such interference within thirty (30) days of City's demand; City may terminate this lease without penalty.

23. LIENS

City shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of City and shall indemnify, defend and hold Owner harmless from all claims, costs and liabilities, including reasonable attorneys' fees and costs, in connection with or arising out of any such lien or claim of lien. City shall cause any such lien imposed on the Premises to be released of record by payment or posting of a proper bond within thirty (30) days after written request by Owner.

24. SUBORDINATION

City agrees that this Lease shall be subject and subordinate to any mortgages or deeds of trust now or hereafter placed upon the Premises and to all modifications thereto, provided that City's possession of the Premises shall not be disturbed so long as City continues to perform its duties and obligations under this Lease and City's obligation to perform such duties and obligations shall not be in any way increased or its rights diminished by the provisions of this paragraph. City agrees to attorn to the mortgagee, trustee or beneficiary under any such mortgage or deed of trust, and to the purchaser in a sale pursuant to the foreclosure thereof; provided that, City's possession of the Premises shall not be disturbed so long as City shall continue to perform its duties and obligations under this Lease.

In the event that the Owner determines that it intends to sell the Premises for any reason, the City shall have a first option to buy such property. The purchase price shall be the fair market value as determined by the City and Owner.

25. ENTIRE AGREEMENT AND BINDING EFFECT

This Lease and any attached exhibits and nondisturbance and attornment agreement(s) mentioning this Lease, constitute the entire agreement between Owner and City; no prior written promises or prior contemporaneous or subsequent oral promises or representations will be binding. This Lease will not be amended or changed except by written instrument signed by the

parties hereto. Section captions herein are for convenience of reference only and neither limit nor amplify the provisions of this Lease. The invalidity of any portion of this Lease shall not have any effect on the balance thereof. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of Owner and City

26. GOVERNING LAW

This Lease shall be governed by the laws of the State of Nebraska.

26. NON-BINDING UNTIL FULLY EXECUTED

This Lease is for discussion purposes only and does not constitute a formal offer by either party. This Lease is not and shall not be binding on either party until and unless it is fully executed by both parties.

IN WITNESS WHEREOF, Owner and City have signed this Lease as of the date and year first above written.

CITY:

OWNER:

By: _____

Name: _____

Title: _____

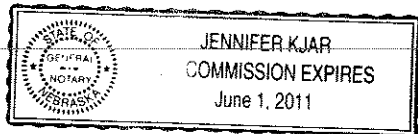
By: Lynnette McGill

Name: Lynnette McGill

Title: _____

State of Nebraska)
)ss
County of Lancaster)

The foregoing instrument was acknowledged before me on this 11th day of March 2010, by Lynette McGill.



My Commission expires:

6-1-2011

Lynnette McGill
Notary Public

EXHIBIT A

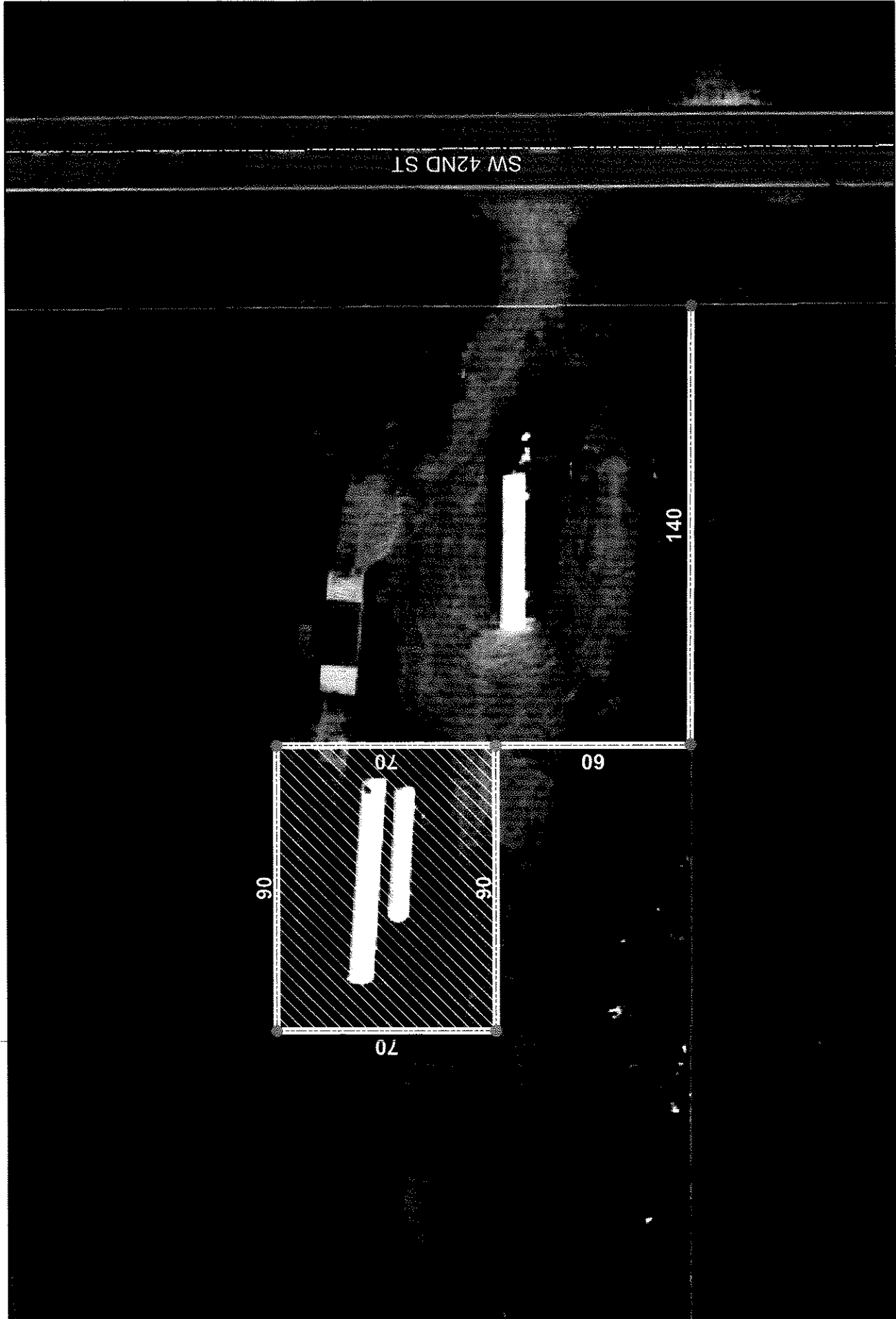
For the Premises and Communication Facility

Generally described as 4525 W. Hallam Rd, Hallam, NE

With the legal description as follows:

A portion of Lot 33, Irregular Tract in the NE1/4 of the NE1/4 of Section 31, Township 7 North, Range 6 East of the 6th Principal Meridian more particularly described as:

Generally commencing at the SE corner of Lot 33, thence westerly along the southerly line of Lot 33 a distance of 140' to a point, thence at a 90 degree angle to the right a distance of 50' to the true Point of Beginning; thence continuing on the same line a distance of 70' to a point, thence at a 90 degree angle to the left a distance of 90' to a point, thence at a 90 degree angle to the left a distance of 70' to a point, thence at a 90 degree angle to the left a distance of 90' to the Point of Beginning containing an area of 6,300 Square Feet more or less.



Proposed Site, Water Tower Approx Lengths

Tower Site Measure Points
 Tower Site Measure Lines
 Tower Site Area

DRAFT

